

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

CC Communications

**Revision of the Commission's Rules
To Ensure Compatibility With
Enhanced 911 Emergency Calling
Systems**

**Request for Temporary Waiver, or
Temporary Stay, of Section 20.18(g)(1)(v)
of the Commission's Rules**

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) **CC Docket No. 94-102**
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To: Chief, Wireless Telecommunications Bureau

PETITION FOR TEMPORARY WAIVER OR TEMPORARY STAY

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Summary

CC Communications (“CC”) requests a twenty-four month temporary waiver (or temporary stay) of the requirement codified in Rule Section 20.18(g)(1)(v) that 95% of the handsets on its cellular system be Automatic Location Information (“ALI”)-capable by December 31, 2005. CC is a government-owned entity, and is the licensee of Cellular Radiotelephone Service Station KNKN223, the Frequency Block B cellular system serving the Nevada 1 – Humboldt RSA.

CC serves a sparsely populated rural area, and has coordinated its E-911 plans with the Public Safety Answering Points (“PSAPs”) in its service area. CC is overbuilding its analog facilities with Code Division Multiple Access (“CDMA”) facilities, and currently provides CDMA service to approximately 50% of its service area. The CDMA overbuild is scheduled for completion in 2008, at which time CC intends to discontinue analog operations. The transition of customers from non-Automatic Location Information (“ALI”)-capable handsets is attributable to CC’s extremely low 2% annual churn rate and a general customer unwillingness to part with their current phone units. In addition, customers with the older 3 watt bag-phone and vehicle-mounted models are reluctant to change out their higher-power handsets for the lower-power ALI-capable telephones. This customer reluctance seems to be primarily due to the coverage advantage afforded by the analog phones in CC’s rural service area. CC provides E-911 Phase II service in one county; but has received no other PSAP requests for Phase II service.

CC meets the E-911 waiver standards previously established by the Commission.

In addition, grant of the requested relief meets the standard codified in Section 107 of the ENHANCE 911 Act.

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To: Chief, Wireless Telecommunications Bureau

PETITION FOR TEMPORARY WAIVER OR TEMPORARY STAY

CC Communications ("CC"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a twenty-four (24) month temporary waiver (or temporary stay), up to and including December 31, 2007, of the requirements of Section 20.18(g)(1)(v) of the Rules, within which to ensure that penetration of location-capable handsets among its subscribers reaches the 95% benchmark. Rule Section 20.18(g)(1)(v) specifies that the 95% penetration level be reached no later than December 31, 2005. In support hereof, the following is shown:

I) Background

1. CC is the licensee of Cellular Radiotelephone Service Station KNKN223, the Frequency Block B cellular system serving the Nevada 1 - Humboldt Rural Service Area. CC is wholly-owned by the County Government of Churchill County, Nevada, and, as such, is a government-owned entity. CC serves a predominantly rural area, and has fewer than 500,000 subscribers. Because it has fewer than 500,000 subscribers, CC is classified as a Tier III Commercial Mobile Radio Service ("CMRS") provider, as defined in the Commission's *Non-Nationwide Carriers*

Order (Order to Stay), 17 FCC Rcd. 14841, Para. No. 22 (2002).

2. There are six Public Safety Answering Points (“PSAPs”) in CC’s eight-county service area, as follows: a) Churchill County, Nevada – Churchill County Sheriff’s Office in Fallon, Nevada; b) Pershing County, Nevada – Pershing County Sheriff Department Dispatch in Lovelock, Nevada; c) Humboldt County, Nevada – Humboldt County Sheriff Department in Winnemucca, Nevada; d) Lander County and Eureka County, Nevada – Lander County Sheriff Department in Battle Mountain, Nevada; e) Mineral County, Nevada – Mineral County Sheriff Department in Hawthorne, Nevada; and f) Nye County and Esmeralda County, Nevada – Nye County Sheriff Department in Tonopah, Nevada. CC has coordinated its E-911 plans with these various PSAPs.

3. CC’s system is E-911 Phase I and Phase II compliant. At present, CC provides E-911 Phase II Service to the Churchill County, Nevada PSAP (having earlier provided this PSAP with Phase I service). Because CC is owned by the County Government of Churchill County, Nevada, it is under common control with the Churchill County PSAP. To date, CC has received no other requests for E-911 Phase I or Phase II service; and does not expect to receive any additional requests for the foreseeable future.

4. CC has elected to deploy a handset-based E-911 Phase II Automatic Location Information (“ALI”) technology. A handset-based solution was selected in view of the rural nature of the service area and the distances between the various cells, all of which would have rendered it difficult to meet the accuracy standards for network-based solutions codified in Section 20.18(h)(1) of the Commission’s Rules without expensive network upgrades needed to perform the triangulation function; and because the handset-based solution was viewed as inherently more accurate in rural areas.

5. CC's system presently employs both analog and digital air interfaces. The digital portion of the system employs the Code Division Multiple Access ("CDMA") air interface. The CDMA overbuild is still in progress, with the overbuild CDMA facilities presently covering approximately 50% of the service area. The CDMA overbuild is scheduled for completion in 2008, with the complete phase-out of the analog air interface scheduled for the end of 2008 (assuming that the Commission does not extend the Rule Section 22.901(b) requirement that analog capacity be retained until February 18, 2008).

6. Currently, 100% of all new handset activations for mobile service are E-911 ALI-capable for the handset-based solution. Thus, CC currently meets all of the ALI-capable handset activation benchmark requirements codified in Sections 20.18(g)(1)(i) – (iv) (*i.e.*, the 25 percent, 50 percent and 100 percent activation benchmarks). The relief requested here is confined to the December 31, 2005 ninety-five percent ALI-capable handset penetration deadline specified in Rule Section 20.18(g)(1)(v). Therefore, the relief requested is minimal.

7. While CC would like its customers to replace the non-ALI-capable handsets with ALI-capable ones, CC nevertheless cannot compel the customers to change out the handsets until they are ready and willing to do so. The Commission has acknowledged that rural subscribers historically have tended to hold onto their wireless handsets for much longer than customers in larger, metropolitan markets, and that this is a unique challenge to meeting the 95% ALI-capable handset penetration requirement. *See E911 Compliance Deadlines for Tier III Carriers*, 20 FCC Rcd. 7709, Para. Nos. 37, 68, 70, 79 n. 203, and 101 (2005) (the "*2005 E-911 Tier III Carriers Compliance Deadlines Order*"). This is particularly true with the older, three-watt analog bag-phone and vehicle-mounted models, which rural customers like to keep in service seemingly

forever because their higher operating power produces greater range – an advantage in rural settings – and they strenuously resist when CC attempts to persuade them to replace their higher-power analog-only phones with the lower-power ALI-capable phones that are currently commercially available. At present, approximately 80% of the handsets on the system are ALI-capable. In addition, the transfer of customers with non-ALI-capable handsets to ALI-capable ones is impeded by CC's extremely low annual churn rate of approximately 2%, a churn rate considerably lower than projected by the Commission when it established the December 31, 2005 ninety-five percent penetration benchmark. Therefore, due to circumstances clearly beyond its control, CC finds itself unable to meet the Rule Section 20.18(g)(1)(v) requirement that, by December 31, 2005, ninety-five percent of the handsets on the system be ALI-capable. The additional time requested is needed to meet the 95% penetration requirement.

II) Commitment to Achieving Compliance

8. As noted above, CC has received only one PSAP request for E-911 Phase II service and is providing the requested Phase II service; has elected to deploy a handset-based E-911 Phase II ALI solution; is in the process of constructing overbuild facilities using the CDMA air interface; has CDMA facilities presently covering 50% of the service area with facilities providing 100% coverage slated for completion in 2008; and 100 percent of all new handset activations for mobile service are E-911 Phase II ALI-capable. To date, approximately 80% of the handsets served by the system are ALI-capable. In actual practice, the impediments to achieving compliance with the Rule Section 20.18(g)(1)(v) ninety-five percent penetration requirement are, ironically, those imposed by the customers themselves who (for whatever reasons) are either unwilling or simply unmotivated to change out their existing mobile telephones for ALI-capable ones. In rural areas, customers tend to

hold onto their wireless telephones longer than customers in larger, metropolitan markets – and they particularly like to hold onto the older bag-phone and vehicle-mounted models because of their superior range. Obviously, CC cannot compel the customers to replace the handsets until they are ready and willing to do so. Thus, CC is committed to achieving compliance with Rule Section 20.18(g)(1)(v), but achieving compliance with the regulation’s requirements have been stymied by circumstances beyond its ability to control.

III) Temporary Waiver or Stay Request

9. Accordingly, CC requests a temporary waiver, or temporary stay, up to and including December 31, 2007, of the 95% ALI-capable handset penetration requirement set forth in Section 20.18(g)(1)(v) of the Commission’s Rules.

IV) Waiver Standards

10. The general waiver standards are codified in Sections 1.3 and 1.925(b)(3) of the Commission’s Rules. Section 1.3 of the Commission’s Rules states, in relevant part, that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.” Section 1.925(b)(3) of the Rules states that the “Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” The courts have held that a rule waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.” *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164,

1166 (D.C. Cir. 1990) *citing* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972). Under WAIT Radio and Northeast Cellular Telephone Co., a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.”” Hearing Aid Compatible Telephones (WT Docket No. 01-309 – Order on Reconsideration and Further Notice of Proposed Rulemaking), FCC 05-122, released June 21, 2005 at Para. 50 n. 158.

11. In its E-911 Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442 (2000), the Commission indicated that the Phase II rules are intended to be applied in a manner that takes into account the practical and technical realities.¹ Recognizing that practical and technical realities might delay Phase II implementation, the Commission established a general approach to dealing with possible requests for waiver of the Phase II requirements.² Thus, the Commission provided that its rules may be waived for good cause shown, consistent with Section 1.3 of the Rules.³ It recognized, in the case of E-911, that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by the established deployment deadlines.⁴ The Commission cautioned that waiver requests should be specific, focused and limited in scope, with a clear path to full compliance and should document the

¹ 15 FCC Rcd. 17442 at Para. 22.

² Id. at Paras. 42-45.

³ Id.

⁴ Id.

efforts aimed at compliance.⁵

12. In addition, Section 107 of the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, 118 Stat. 3986, 3991 (2004) (the “ENHANCE 911 Act”) directed the Commission to grant qualified Tier III carriers’ requests for relief of the Rule Section 20.18(g)(1)(v) December 31, 2005 ninety-five percent penetration deadline for ALI-capable handsets if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”

V) CC Has Met The Waiver Standards

13. As shown above, CC has met the Commission's standards for obtaining the requested temporary waiver (or temporary stay) of the 95% penetration rate for ALI-capable handsets on the system, specified in Section 20.18(g)(1)(v) of the Commission’s Rules. Clearly, in view of the unique or unusual factual circumstances present here, application of the December 31, 2005 deadline would be inequitable, unduly burdensome or contrary to the public interest. In addition, CC has no reasonable alternative but to request the instant waiver. Furthermore, grant of the requested relief would serve the public interest.

14. CC, a government-owned entity and a small Tier III CMRS carrier serving an eight-county rural area in the State of Nevada, has elected to use a handset-based E-911 solution. It is in the process of installing overbuild CDMA facilities, facilities that presently serve approximately 50% of the service area with completion of the CDMA overbuild facilities scheduled for 2008. One hundred percent of all new handsets activated on the system are ALI-capable. To date, approximately 80% of the handsets on the system are ALI-capable, a state of affairs attributable (at

⁵ Id.

least in substantial part) to CC's extremely low annual churn rate of approximately 2%. Indeed, CC cannot compel the customers to change out the handsets until they are ready and willing to do so. Thus, as a practical matter, CC's compliance with the regulation is subject to and contingent upon subscriber willingness to part with their old handsets in favor of ALI-capable ones. The Commission has acknowledged that rural subscribers historically have tended to hold onto their wireless handsets for much longer than customers in metropolitan markets, and has held that this is a unique challenge to meeting the 95% ALI-capable handset penetration requirement. 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para Nos. 37, 68, 70, 79 n. 203 and 101. This is particularly true of the older bag-phone and vehicle-mounted models, which rural customers strongly desire to retain in service because their higher operating power translates into greater range – a perceived advantage in rural settings. Indeed, the Commission has acknowledged that the desire by customers to continue using their higher-power, three-watt analog telephones is a factor affecting a carrier's ability to meet the December 31, 2005 ninety-five percent ALI-capable handset penetration requirement; has indicated that it is "sympathetic" to these carriers' predicament in meeting the requirement; and has relied on it as a basis for granting relief. 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para. Nos. 68, 70, 79 n. 203 and 103.

15. Thus, CC has been diligent in its efforts to secure compliance with all applicable E-911 requirements of the Commission's Rules, including the December 31, 2005 ninety-five percent ALI-capable handset penetration requirement. Clearly, CC has shown a clear path to achieving full compliance and its efforts are well-documented by the showings contained herein. Indeed, the relief requested herein is minimal, confined as it is to one discrete regulatory requirement. A request for minimal relief warrants the grant of relief especially where, as here, the applicant has

shown a plan to achieve full compliance. See 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para. Nos. 47, 50, and 63.

16. Equally as compelling, CC has kept the PSAPs in its service area apprised of its E-911 plans, and has received only one request for E-911 Phase II service. The Commission has indicated that these factors warrant temporary relief from the E-911 obligations codified in the Rules. See 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para. Nos. 29, 34, 44, 50, 86. Indeed, the absence of requests for E-911 Phase II service from the remaining PSAPs indicates that granting the requested relief “would not undermine [the Commission’s] policy objective of ensuring access to E911 service.” 2005 E-911 Tier III Carriers Compliance Deadlines Order, at Para. No. 86.

17. In addition, the inability to meet the December 31, 2005 ninety-five percent handset penetration deadline is clearly due to circumstances beyond CC’s control; and, therefore, the delay in achieving compliance with the requirement is simply unavoidable. The common sense truth of the matter is that CC cannot compel the customers to change out the handsets if they do not wish to do so. It appears that the customers feel that retaining their existing handsets is more important than having E-911 Phase II service, particularly in the case of the older bag-phone and vehicle-mounted models which have greater range than newer model handsets – a perceived advantage in rural areas. Indeed, these customers apparently see no good reason to give up their higher-power telephones, and perceive that they would gain nothing at present from replacing them with ALI-capable ones because E-911 Phase II service has been initiated in only one county in CC’s eight-county service area due to the absence of PSAP requests for such service from the remaining PSAPs.

18. It should also be emphasized that, in the 2005 E-911 Tier III Carriers Compliance

Deadlines Order at Para. Nos. 15 - 91, the Commission granted extensions of the 95% ALI-capable handset penetration rule to carriers upgrading their subscribers from one air interface to another. CC's circumstances are consistent with those that justified the grant of waiver relief to these other wireless carriers, and the Commission has a legal obligation to treat similarly situated parties alike. *See Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965); *see also Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1994) *and Ramon Rodriguez & Associates*, 3 FCC Rcd. 407, 408 (1988) (stating that *Melody Music* "broadly sets out the Commission's obligation to assure comparable treatment of similarly situated parties").

VI) The Requirements of the ENHANCE 911 Act Are Satisfied

19. The relief requested is fully consistent with the requirements of Section 107 of the ENHANCE 911 Act. That statutory provision directs the Commission to grant qualified Tier III carriers' requests for relief of the Rule Section 20.18(g)(1)(v) December 31, 2005 ninety-five percent penetration deadline for ALI capable handsets if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."

20. Absent grant of the requested relief, CC could be required to terminate service to those existing customers who (for whatever reason) have voluntarily elected to retain their non-ALI-capable handsets in order to achieve compliance with the Rule Section 20.18(g)(1)(v) ninety-five percent penetration requirement. This would clearly result in the affected "consumers having decreased access to emergency services" because they would be denied access to basic 911 service. Clearly, such a result would disserve the public interest; and, therefore, strict application of the Rule's requirement could produce a result that runs counter to the policy objectives that underlie the Commission's E-911 Rules – namely the provision of emergency services to wireless consumers.

21. In addition, and as noted above, many customers desire to retain their existing, higher-power analog bag-phone and vehicle-mounted models due to the greater range that these units afford. If required to migrate to digital CDMA handsets in the most rural portions of CC's service area, some subscribers would be unable to complete a telephone call at all, including emergency calls. The Commission has held that "strict enforcement of the December 31, 2005 deadline under these circumstances would impair the ability of certain emergency callers to reach emergency assistance, and thus 'would result in consumers having decreased access to emergency services,' within the meaning of the ENHANCE 911 Act, at least in some cases." Petition For Waiver of Enhanced 911 Phase II Requirements, Order, CC Docket No. 94-102, FCC 05-182, released October 28, 2005 at Para. No. 20. See also Request for Enhanced 911 Phase II Waiver by Northeast Communications of Wisconsin d/b/a Cellcom, Order, CC Docket No. 94-102, FCC 05-200, released December 8, 2005 at Para. No. 17; Request for Waiver by Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, Order, CC Docket No. 94-102, FCC 05-188, released November 3, 2005 at Para. No. 19.

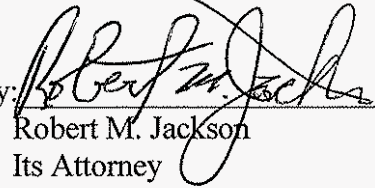
WHEREFORE, good cause shown, CC requests that the instant petition be granted.

Respectfully submitted,

CC Communications

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By:


Robert M. Jackson
Its Attorney

Filed: December 21, 2005

DECLARATION UNDER PENALTY OF PERJURY

I, Robert G. Adams, hereby state the following:

1. I am the General Manager of CC Communications.

2. I have read the foregoing "Petition for Temporary Waiver or Temporary Stay."
With the exception of those facts of which official notice can be taken, all facts set forth
therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on this 20th day of December, 2005.


Robert G. Adams